

## **REMARKS**

This application has been reviewed in light of the Office Action dated January 22, 2009. The Examiner has rejected claims 1- 9 under 35 U.S.C. §101, as not falling within one of the four statutory categories of invention stating that the statutory process must (1) be tied to another statutory category (such as a particular apparatus), or 2) transform subject matter (such an article or material) to a different state or thing. The Applicant has amended claims 1 and 5 to tie the process of the invention to an apparatus, namely the storage of instructions of a computer readable storage medium as now recited in amended claims 1 and 5.

The Applicant believes these amendments tie the steps as recited to a computer readable storage medium or apparatus in accordance with recent case law and that the invention now clearly falls within the statutory categories of invention specifically.

Also, claims 1-4 are rejected under 35 U.S.C. §112, 2<sup>nd</sup> paragraph as failing to comply with the written description requirement, stating that the claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, has possession of the claimed invention. The Examiner notes that the subject matter of the amendment to claim 1 received on October 14, 2008 was not described in the specification.

The Applicant contends that transition state is supported in the Applicant's specification page 7 lines 4-10;

“Additionally, the flow of images in the video stream 770 must be smooth without perceptual discontinuities when looped and controlled by the loop position control 790. The trajectory computation 750 computes a path through the range-limited n-dimensional space to create a set of images that *smoothly transitions* from one image to the next in video stream 770. The result of the trajectory calculation is a list of image parameters that are applied to the original image 720.”

where the flow of images in the video stream are looped thereby having a nominal state of the first image being the same at the beginning and the end of the loop, and smoothly transitions is used to describe the range-limited set of images within the video stream therefore these images are a transition state from the nominal state of the first image.

However to fully address the Examiner's rejection, the Applicant has further amended lines 14-20 of claim1 as follows;

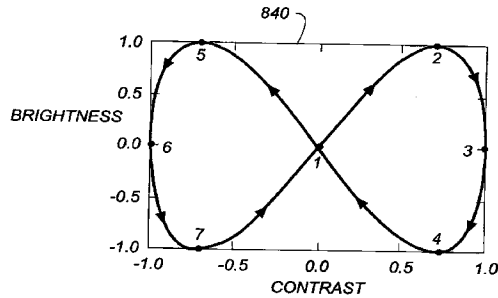
“d) ensuring the video loop continuously follows a path through the useful ranges of each of the two or more one-dimensional image characteristic controls from a first image nominal state through a transition state of the several combinations of images and back to the nominal state; and  
e) defining the entire length of the video stream of captured images within the path in the transition state according to different useful range values of each of the two or more one-dimensional image characteristic controls.”

These amendments add the first image to the nominal state and of the several combinations of images to the transition state, and add the video stream of captured images within to the path in the transition state. These amendments are supported by the section of the specification shown above thus clearly describing subject matter from within the specification. In view thereof, the Applicant respectfully requests that the Examiner reconsider and withdraw all indefiniteness rejections to claims 1 – 4 under 35 U.S.C. §112.

Claims 1, 3, 4, 9 and 10 are rejected as obvious under 35 U.S.C. 103(a) as being unpatentable over using Adobe Photoshop in view of Macro Media Flash MX (R. Chrissy, 2002). Additionally, claims 2, 5, 6, 7, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over using Adobe Photoshop in view of Macro Media Flash MX (R. Chrissy, 2002) in further view of Ono et al. US 6,295,136. The Applicant acknowledges and respectfully traverses the raised obviousness rejections in view of the above amendments and the following remarks. The Applicant acknowledges the Examiner's remarks with respect to the agreement that these references are used for different purposes and the note that a newer version of these references can be intergratable with one another.

While the integration of the combined references as two software programs may demonstrate that a user could transfer from one program to another, it does not show that the purpose or function of either program has changed. Similar to other integrated programs such as a word processor for writing documents or a spreadsheet program for calculations, a user of skill in the art would not readily use the utility and function of one program such as the spreadsheet program for writing documents but instead would use the word processing program to write the document and as needed import calculations from the spreadsheet program. The programs may be seen as integrated however it would not be obvious to replace a function of one program with one utility with a function in another program that has a completely different purpose. Further if the program is photo manipulation as it is in this instance, there is no obvious feature in this integration that would motivate the user to repeat any particular command in the software program over and over again by using an animation feature to complete a function of image processing that is already within the single convenient GUI of the photo manipulation program. Simply, the Applicant contends that it would not be obvious to the user to add animation to a process that is already accomplished by manipulation of slider controls and other features in the software. Therefore the references still fail to motivate the user to use the software programs in this combined manner when the functions and features of the separate programs are for different purposes.

As stated in the Applicant's earlier response, even if the applied references can be combined as alleged by the Examiner, and the Applicant does not concede this point hereby, the references either alone or in combinations still fail to disclose, teach or suggest at least one of the limitations in Claim 1. The aspect of relating to the nature of the path of the trajectory through the n-dimensional space of the present invention is not taught, disclosed or suggested in any manner by either of the cited references either alone or in combination.



**FIG. 8**

As seen in Fig. 8 above and discussed at pg. 7, ll. 24-25, the loop completes a cycle with the image, starting from its initial nominal state 1 and then traverses the proscribed path 2,3,4 and returns to the nominal state 1 without using any of the same values throughout its entire trip. This is not the case in the Flash MX program where the user chooses an initial shape and a final shape, and then the program creates "...intermediate shapes to tween from one shape to the next" Pg. 8 of [safaribooksonline.com](http://safaribooksonline.com) reference. In this regard, although the reference discloses a control/Loop Playback command, this command merely plays over and over again the morphing of one shape to another in one direction. In other words, Flash MX creates a finite path from a starting shape to an ending shape, where the finite path ends at an entirely different point than where it started. Then, the loop playback command performs this finite path again, skipping back to the initial shape to "tween" to the final shape again. Such a playback command is in no manner, "ensuring the video loop *continuously* follows a path through the useful ranges of each of the two or more one-dimensional image characteristic controls from a first image nominal state through a transition state of the several combinations of images and back to the nominal state;" (emphasis added) as currently recited in claim 1.

It is not clear from the description in the reference, but the "tween" could conceivably be run forwards, then backwards from the ending shape to the starting shape. If this were true, it would of course have to use the same "tween" shapes that Flash MX developed in the forward morphing of the shapes. Again, even if this is now the playback loop in Flash MX occurs it is not "defining the entire length of the video stream of captured images within the path in the transition state according to *different useful range values* of each of the two or more one-dimensional image characteristic controls. (emphasis added). Support for this claim language is specifically found in Fig. 8 as shown above and is explicit in the written description at pg. 7, ll. 22-28:

“The loop completes with contrast less than zero as brightness is again brought to a maximum (position 5), then a minimum while bringing contrast to a minimum (position 7). The loop completes one cycle with the image and is again returned to it’s nominal state. In this example, not every combination of brightness and contrast are rendered. Since these controls are continuous, an infinite number of frames would be required, and it is not possible to render all possible combinations.”

This feature is also explicitly discussed at Applicant’s page 7 lines 14-25 in the discussion of the within the trajectory in the 2D space and is also clearly shown in Fig. 8. This is an important aspect of the present invention where continuously cycling through such a nominal state according to unrepeated trajectory path values is critical in the comparison by the user of the manipulation and rendering of the underlying image characteristics.

Additionally, the Applicant notes that the video loop of the Applicant’s present invention is automatic, in other words, as discussed in the previous response this video loop does not require a user to move a slider or some other type of control to create a “video effect”, as the Examiner states regarding the cited art of Adobe Photoshop 5. Instead, the Applicant’s video loop is an actual loop that plays automatically, continuously and is perceptibly smooth in its appearance. Near forward/backward movement of a slider with Adobe Photoshop does not produce these features. Specifically, where the user slides the slider to a specific position and releases the slider, the slider stops and the actuation of whatever characteristics have been applied to the underlying photo. In other words the Applicants video loop is automatic and plays without intervention, until the user decides upon which image appearing in the loop he or she desires most based upon the rendering performed upon the particular image. In this regard independent claim 1 recites that the continuous video loop is *continuously* cycled in a loop beginning and ending in a nominal setting of the captured image and claim 10 recites that the continuous video loop plays *without any user intervention* until the user’s desired rendered image appears. This is actually taught away from by the automatic slider where user intervention is required.

With regards to combining the noted references with Ono et al. (6,295,136) which will be referred to as Ono et al. `136, this reference while describing “range limiting means for restricting parameters selectable by the print quality specifying means to a plurality of predetermined parameters among the

plurality of predetermined parameters stored...” (col. 3 lines 10 – 13) fails to teach, disclose or support this restriction of the range of parameters as not being predetermined. Limiting a range of predetermined parameters to the printing quality limitations of the printer control apparatus of a particular printer based upon the hardware characteristics of that printer as described by Ono et al. `136 and then presenting only options within this range for the user to make a selection, is significantly different from the Applicant’s automated range settings of image characteristic controls set by “values that would produce a visually pleasing output to a particular user” from the Applicant’s specification page 6 line 16 – 17. The Applicant’s range settings are determined based upon the nominal image and are modified for different images, so in no way are predetermined as described in the Ono et al. `136 reference.

Further it would not be obvious to a user to combine the predetermined restriction of the range of parameters from the reference of Ono et al. `136 with the Adobe Photoshop reference and the Flash MX reference and arrive at a range limiting algorithm that is determined based on a selected image. This is because as a user of the printer control software of Ono et al. `136 the user would not be able to determine from the display that a limited range of options was shown based upon the particular printer control apparatus. The addition of Ono et al. `136 to the combined references fails to teach, support or disclose a range limiting image control based on the nominal image selected. The Applicant therefore respectfully requests that the obviousness rejections of the claims 1 – 7 and 9 through 12 be withdrawn.

In view of the above amendments and remarks the Applicant summarizes the above by noting that in any of the references, either alone or in combination it is not taught, disclosed, or suggested that the loop is continuous and does not double back on itself i.e. reuse any of its values in the range defining the trajectory path in returning to a nominal value. Nor do the references disclose any portion of a trajectory path which is maintained substantially constant for a period of time or space. Therefore, it is the Applicant’s position that the present invention constitutes a non-obvious step over using Adobe Photoshop in view of Macro Media Flash MX (R. Chrissy, 2002) and further in view of Ono et al. `136, and it is respectfully requested in view of the above amendments and remarks that the raised § 103 rejection should be withdrawn at this time.

The Examiner is respectfully requested to withdraw the outstanding rejection and to pass the subject application to Allowance. If any further amendments are necessary to place this case in condition for allowance the Examiner is respectfully requested to contact the undersigned attorney of record to discuss the same. In view of the foregoing amendments and remarks, Applicant respectfully requests favorable reconsideration and the allowance of the present application.

Respectfully submitted,

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If the Examiner is unable to reach the Applicant(s) Attorney at the telephone number provided, the Examiner is requested to communicate with Eastman Kodak Company Patent Operations at (585) 477-4656.